

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES D. OFELDT,
#81842

Plaintiff,

vs.

ELDON K. MCDANIEL, *et al.*,

Defendants.

3:10-cv-00494-RCJ-RAM

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The court now reviews the complaint.

I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a

1 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
2 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

3 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
4 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
5 Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under
6 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,
7 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
8 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
9 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
10 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
11 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard, the
12 court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital*
13 *Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff and
14 resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

15 Allegations in a *pro se* complaint are held to less stringent standards than formal
16 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
17 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
18 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
19 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
20 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
21 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
22 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
23 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

1 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
 2 complained of was committed by a person acting under color of state law; and (2) that the conduct
 3 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689
 4 (9th Cir. 2006).

5 **II. Instant Complaint**

6 Plaintiff, who is currently incarcerated at Ely State Prison (“ESP”), has sued ESP Warden
 7 Eldon K. McDaniel. Plaintiff alleges that the living conditions in ESP segregated housing violate the
 8 Eighth Amendment. He claims that he is locked up 24 hours a day with the exception of one 15-minute
 9 shower every three days and five hours per week outdoor exercise. He asserts generally that the meals
 10 are inadequate in nutrients and volume. He alleges that mentally ill inmates that are housed in
 11 disciplinary units instead of receiving treatment cause continuous “nerve-shattering” noise of banging
 12 on doors, flooding, fires, screaming, etc. He complains generally of the conditions, including bans of
 13 purchasing books, no rehabilitative programs, no law clerks, inadequate access to the law library,
 14 tremendous delays for dental and medical services. He alleges that the conditions are atypical and a
 15 substantial burden in relation to the normal incidents of prison life.

16 The Eighth Amendment prohibits the imposition of cruel and unusual punishments and
 17 “embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency.” *Estelle*
 18 *v. Gamble*, 429 U.S. 97, 102 (1976). “No static ‘test’ can exist by which courts determine whether
 19 conditions of confinement are cruel and unusual, for the Eighth Amendment ‘must draw its meaning
 20 from the evolving standards of decency that mark the progress of a maturing society.’” *Rhodes v.*
 21 *Chapman*, 452 U.S. 337, 346 (1981) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). However, “The
 22 Constitution ‘does not mandate comfortable prisons.’” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)
 23 (quoting *Rhodes*, 452 U.S. at 349).

24 [A] prison official violates the Eighth Amendment only when two
 25 requirements are met. First, the deprivation alleged must be, objectively,
 26 ‘sufficiently serious[;]’ a prison official’s act or omission must result in the
 denial of ‘the minimal measure of life’s necessities’[.] . . .

The second requirement follows from the principle that ‘only the unnecessary and

1 wanton infliction of pain implicates the Eighth Amendment.’ To violate the
2 Cruel and Unusual Punishments Clause, a prison official must have a
3 ‘sufficiently culpable state of mind.’

4 *Farmer*, 511 U.S. at 834.

5 For example, “[d]eprivation of outdoor exercise violates the Eighth Amendment rights
6 of inmates confined to continuous and long-term segregation.” *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th
7 Cir. 1996) (citing *Spain v. Procnier*, 600 F.2d 189, 199 (9th Cir. 1979)), *amended by* 135 F.3d 1318 (9th
8 Cir. 1998); *see also Hearn v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005); *Lopez v. Smith*, 203 F.3d
9 1122, 1133 (9th Cir. 2000) (*en banc*); *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1995); *Allen v. City of*
10 *Honolulu*, 39 F.3d 936, 938-939 (9th Cir. 1994); *LeMaire v. Maass*, 12 F.3d 1444, 1457-58 (9th Cir.
11 1993); *Toussaint v. Yockey*, 722 F.2d 1490-1492-93 (9th Cir. 1984). “[A] temporary denial of outdoor
12 exercise with no medical effects[, however,] is not a substantial deprivation.” *May v. Baldwin*, 109 F.3d
13 557, 565 (9th Cir. 1997); *see also Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998). Prison officials
14 may restrict outdoor exercise on the basis of weather, unusual circumstances, or disciplinary needs. *See*
15 *Spain*, 600 F.2d at 199. “The cost or inconvenience of providing adequate [exercise] facilities [,
16 however,] is not a defense to the imposition of cruel punishment.” *Id.* at 200.

17 While the allegations set forth by plaintiff may implicate the Eighth Amendment, this
18 court finds that the claims are so vague and general that it is unable to determine whether the current
19 action is frivolous or fails to state a claim for relief. While plaintiff has set forth a litany of general
20 allegations regarding the living conditions in ESP segregated housing, he has not alleged any specific
21 deprivation of his personal constitutional rights. Moreover, while plaintiff names only ESP Warden
22 McDaniel as defendant, “[l]iability under [§] 1983 arises only upon a showing of personal participation
23 by the defendant. A supervisor is only liable for the constitutional violations of . . . subordinates if the
24 supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent
25 them. There is no respondeat superior liability under [§] 1983.” *Taylor v. List*, 880 F.2d 1040, 1045
26 (9th Cir. 1989) (citations omitted); *see also Hydrick v. Hunter*, 500 F.3d 978, 988 (9th Cir. 2007); *Ortez*
 v. Washington County, State of Or., 88 F.3d 804, 809 (9th Cir. 1996) (concluding proper to dismiss where

1 no allegations of knowledge of or participation in alleged violation). Plaintiff does not describe any
2 specific acts or omissions by Warden McDaniel, nor does he allege that Warden McDaniel had
3 knowledge of or participated in any alleged civil rights violation.

4 However, because plaintiff's allegations may implicate his Eighth Amendment right to
5 be free from cruel and unusual punishment, he has leave to file an amended complaint. If plaintiff elects
6 to proceed in this action by filing an amended complaint, he is advised that he should specifically
7 identify each defendant to the best of his ability, clarify what constitutional right of plaintiff's he believes
8 each defendant has violated and support each claim with specific factual allegations about each
9 defendant's actions. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative
10 link or connection between a defendant's actions and the claimed deprivation. *Rizzo v. Goode*, 423 U.S.
11 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v. Duffy*, 588 F.2d 740, 743
12 (9th Cir. 1978). Plaintiff's claims must be set forth in short and plain terms, simply, concisely and
13 directly. *See Swierkeiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); Fed. R. Civ. P. 8.

14 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
15 plaintiff's amended complaint complete. Local Rule 15-1 requires that an amended complaint be
16 complete in itself without reference to any prior pleading. This is because, as a general rule, an amended
17 complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once
18 plaintiff files an amended complaint, the original pleading no longer serves any function in the case.
19 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each
20 defendant must be sufficiently alleged.

21 **III. Conclusion**

22 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the complaint (docket #1-
23 2).

24 **IT IS FURTHER ORDERED** that plaintiff's complaint is **DISMISSED WITH**
25 **LEAVE TO AMEND** in conformance with this order.

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1 **IT IS FURTHER ORDERED** that plaintiff will have **thirty (30) days** from the date that
2 this Order is entered to file his amended complaint, if he believes he can correct the noted deficiencies.
3 The amended complaint must be a complete document in and of itself, and will supersede the original
4 complaint in its entirety. Any allegations, parties, or requests for relief from prior papers that are not
5 carried forward in the amended complaint will no longer be before the court.

6 **IT IS FURTHER ORDERED** that plaintiff shall clearly title the amended complaint
7 as such by placing the words "FIRST AMENDED" immediately above "Civil Rights Complaint
8 Pursuant to 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number, **3:10-**
9 **CV-00494-RCJ-RAM**, above the words "FIRST AMENDED" in the space for "Case No."

10 **IT IS FURTHER ORDERED** that plaintiff is expressly cautioned that if he does not
11 timely file an amended complaint in compliance with this order, this case may be immediately
12 dismissed.

13 **IT IS FURTHER ORDERED** that the Clerk shall send to plaintiff a blank section 1983
14 civil rights complaint form with instructions along with one copy of the original complaint.

15 **IT IS FURTHER ORDERED** that defendant's motion to extend time to respond to
16 complaint (docket #4) is **DENIED**. Once any amended complaint has been screened, the court will issue
17 a scheduling order as appropriate.

18 **IT IS FURTHER ORDERED** that plaintiff's motion to strike defendants State of
19 Nevada and Nevada Department of Corrections (docket #5) is **GRANTED**.

20 DATED: November 30, 2010.

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23 UNITED STATES MAGISTRATE JUDGE
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